CHELLAPPA KALIMUTHU

v.

SIME UEP PROPERTIES BHD & ORS

HIGH COURT MALAYA, SHAH ALAM
HISHAMUDIN YUNUS J
[CIVIL SUIT NO: 21-353-96]
11 FEBRUARY 2002

CIVIL PROCEDURE: *Summons-in-chambers - Application to amend statement of claim - Failure to state grounds for application in Form 62 Rules of the High Court 1980 - Whether summons-in-chambers rendered defective - Whether reference to grounds in supporting affidavit sufficient - Rules of the High Court 1980, O. 32 r. 1*

The plaintiff applied by way of a summons-in-chambers to amend his statement of claim. The first defendant objected to the application submitting that the summons-in-chambers did not comply with O. 32 r. 1 and Form 62 of the Rules of the High Court 1980 ('RHC') as the grounds for the application were not given.

Held:

[1] It is imperative that the grounds for the application be stated in the summons for the word "must" is used in r. 1 of O. 32 RHC. Also, Form 62 RHC stipulates this requirement in clear terms by the presence of the words "The grounds of the application are (state the grounds) …" in the form. The grounds are an essential and important part of the summons-in-chambers. Without stating them, there was a serious non-compliance with O. 32 r. 1 RHC with the consequence that the said application could not be said to be an application made by summons in Form 62. (p 202 c-d)

[2] The so-called grounds set out in the summons were too vague even to be regarded as general grounds and were of no legal significance. The grounds for the application need not be set out in detail in the summons. There are no rigid rules nor a standard format as to what the "grounds" must contain. It all depends on the circumstances of the individual case. What is required, however, is a concise statement of the grounds or reasons for the amendment. It must contain substantive information. If the reason for the amendment to the statement of claim is the subsequent discovery of new facts by the plaintiff, then it must be stated clearly in the summons as the grounds for the application (i) some information as to when the new facts were discovered (there is no necessity to give the

exact date if that is not possible); (ii) some information (which need not be too detailed) as to what are the new facts; and (iii) a brief explanation as to the relevance of the newly discovered facts to the plaintiff's claim. (pp 202 f, i & 203 a-d)

[3] The reference to the grounds of the application in the supporting affidavit was of no help to the plaintiff for the purpose of O. 32 r. 1 RHC. Where the specific rule in the RHC stipulates that the grounds must be stated in the notice of motion then the grounds must be stated in the notice of motion itself. It will not suffice that the grounds are set out, even if in great detail, in the supporting affidavit. The failure to state the grounds in the notice of motion renders the notice incomplete and irregular and the notice of motion should be rejected by the court. Although the case of *Dr Woo Kin Chong v. Mary Ou Holdings Sdn Bhd* concerns a notice of motion under O. 69 r. 4(2) RHC, the principle enunciated therein equally applies to a summons under O. 32 r. 1 RHC. (p 203 d-h)

Per curiam:

[1] The so-called grounds set out in the summons were as good as if no grounds were given in the summons. Despite ample judicial decisions on the point, time and again litigants have to be reminded that rules of procedure have to be respected and taken seriously. Compliance with rules of procedure are not meant to be only optional, or to be complied only by the diligent and rule-abiding litigants. Neither are they to be ignored nor to be taken very lightly with impunity by the indolent. If the latter is the case, then the diligent and rule-abiding solicitors will become the laughing stock of their fellow errant professionals. (p 202 f-h)

[Application dismissed.]

Case(s) referred to:

BSN Commercial Bank (Malaysia) Bhd v. KDG Holdings (M) Sdn Bhd & Ors [1999] 2 CLJ 180 ***(not foll)***

Dr Woo Kin Chong v. Mary Ou Holdings Sdn Bhd [1997] 5 CLJ 164 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 32 r. 1, O. 69 r. 4(2), Form 62

For the plaintiff - K Kirubakaran; M/s Kiru & Yong
For the 1st defendant - Deborah Kaur; M/s Mah Weng Kwai & Assoc
For the 2nd & 3rd defendants - Encik Kamarulzaman; Assistant State Legal Advisor, Selangor

Reported by Usha Thiagarajah

JUDGMENT

Hishamudin Yunus J:

This summons in chambers (encl. 55) is an interlocutory application by the plaintiff to amend the statement of claim.

At the hearing of the application, the Assistant State Legal Adviser, Selangor, Encik Kamarulzaman, appearing for the second and third defendants, informed the court that he has no objection to the application.

The first defendant, however, objected to the application. A preliminary objection was raised by Cik Deborah Kaur, the learned counsel for the first defendant, regarding the summons in chambers. She submitted that the summons in chambers was defective by reason of non-compliance with O. 32 r. 1 and Form 62 of the Rules of the High Court (the 'RHC'). She argued that there was non-compliance because the grounds for the application to amend the statement of claim were not stated in the summons in chambers. Learned counsel contended that, in the light of the word 'must' in O. 32 r. 1, it was mandatory for the applicant/plaintiff to state the grounds in the summons in chambers and that the failure to do so was fatal to the application.

Order 32 r. 1 states:

> **1. Mode of making application.**
> Except as provided by Order 25 rule 7, every application in Chambers **must** be made by summons in Form 62. (emphasis added)

Form 62 of Appendix A of the RHC sets out the format of the summons as follows:

> No. 62
>
> SUMMONS IN CHAMBERS (O. 32 r. 1)
>
> (Title as in action)
>
> Let all parties concern attend before the Judge (or Registrar) in Chambers on ..., the ... day of ..., 19 ..., at ... a.m. on the hearing of an application on the part of (state nature of the application).
>
> The grounds of the application are (state the grounds)
>
> Dated the ... day of ... 19 ...
>
> Entered No. ... of 19 ...
>
> *Clerk*

(Seal)

...

Registrar

This summons is taken out by the plaintiff (or as the case may be) of (state address).

To the defendant (or as the case may be).

In support of her argument, Cik Deborah Kaur, in her written submission, cited *Dr Woo Kin Chong v. Mary Ou Holdings Sdn Bhd* [1997] 5 CLJ 164 where Nik Hashim JC (as he then was) held (at p. 168):

> Accordingly, the notice of motion must contain the grounds. This is a basic requirement. The grounds must be stated within the four corners of the notice itself. Affidavit is not a ground, but it contains evidence. It is a separate document from the notice and its purpose is to verify the facts in the grounds. The affidavit cannot supply the missing grounds which are required to be set out in the grounds in general terms to be stated in the notice itself. The notice without the grounds is incomplete and irregular. An incomplete notice is as good as no notice at all.

The learned counsel for the plaintiff, Encik Kirubakaran, on the other hand, in his written submission, argued that there was compliance with Form 62 in that the grounds have been stated in general terms in the summons in chambers; and learned counsel further submitted that there was also in the summons reference to the grounds in the supporting affidavit.

In the present case, it is stated in the summons in chambers as follows (I shall only refer to the relevant portion of the summons):

> Alasan-alasan membuat adalah bahawa fakta-fakta yang dicadangkan untuk disertakan dalam Pernyataan Tuntutan adalah penting dan seharusnya disertakan untuk mendedahkan segala maklumat berkenaan kepada Mahkamah Terhormat dan tidak memprejudiskan Defendan-Defendan dan selanjutnya seperti dinyatakan di dalam Afidavit Chellappa a/l K. Kalimuthu yang diikrarkan dan difailkan di sini.

Learned counsel for the plaintiff fortified his contention by citing *BSN Commercial Bank (Malaysia) Bhd v. KDG Holdings (M) Sdn Bhd & Ors* [1999] 2 CLJ 180 where Abdul Aziz Mohamad J held (at p. 182):

> It was submitted that the summons in chambers by which the plaintiffs applied for summary judgment did not comply with O. 32 r. 1 of the Rules of the High Court in that it did not state the grounds of the application although it did bear a statement referring for the grounds of the affidavit in support of the application.

> A question that might have been raised by learned counsel for the plaintiffs is whether O. 32 r. 1, which concerns application in chambers by summons generally, applies to an application for summary judgment, in view of the Act that O. 14 r. 2(1) sets out specifically the mode of applying for summary judgment. The point, however, was not raised. Be that as it may, I think it would be sufficient compliance with Form 62 if a summons stated the grounds, as was done in this case, by reference to an affidavit in support of the application.

In my judgment, it is imperative that the grounds for the application be stated in the summons. For the word "must" is used in r. 1 of O. 32, and Form 62 stipulates the requirement in clear terms by the presence of the words:

> The grounds of the application are (state the grounds)

in the form. In my opinion, the grounds are an important and essential part of the summons as prescribed by O. 32 r. 1 and Form 62. Without stating the grounds in the summons in chambers, there has been a serious non-compliance with O. 32 r. 1 with the consequence that encl. 55 cannot be said to be an application made by summons in Form 62.

Now, with reference to encl. 55, the words:

> Alasan-alasan membuat adalah bahawa fakta-fakta yang dicadangkan untuk disertakan dalam Pernyataan Tuntutan adalah penting dan seharusnya disertakan untuk mendedahkan segala maklumat berkenaan kepada Mahkamah Terhormat dan tidak memprejudiskan Defendan-Defendan ...

as found in the summons are too vague even to be regarded as a general grounds. They are too vague to be of any legal significance. I regret to say that the plaintiff, by purporting to state the grounds in such a manner, is clearly merely paying lip service to the rules. To my mind, as far as the present application is concerned, in the manner that the so-called "grounds" were set out in the summons, it is as good as if no grounds were given in the summons. I note with sadness that, despite ample judicial decisions on the point, time and again litigants have to be reminded that rules of procedure are to be respected and taken seriously. And now I am stressing it again that compliance with rules of procedure are not meant to be only optional, or to be complied only by the diligent and rule-abiding litigants. Neither are they to be ignored nor to be taken very lightly with impunity by the indolent. If the latter is the case, then I fear that the diligent and rule-abiding solicitors will become the laughing stock of their fellow errant professionals.

Lest that I be misunderstood, it is not suggested here that the grounds or reasons for the application to amend the statement of claim must be set out in detail in the summons. As to what the "grounds" must contain, there are

no rigid rules; nor a standard format. It all depends on the circumstances of the individual case. Needless to say, the reason to amend differs from one case to another. But what is required, however, is a concise but clear statement of the grounds or reasons for the amendment. The statement should not be verbose but empty of meaning, as in the present case. It must contain substantive information. For example, if the reason for the amendment to the statement of claim is (say) the subsequent discovery of new facts by the plaintiff, then it must be stated clearly in the summons, as the grounds for the application, the following:

(a) some information as to when the new facts were discovered (there is no necessity to give the exact date if that is not possible);

(b) some information (which need not be too detailed) as to what are the new facts; and

(c) a brief explanation as to the relevance of the newly discovered facts to the plaintiff's claim.

Further, it is also to be observed that the so-called "grounds" in the plaintiff's summons went on to state:

> ... dan selanjutnya seperti dinyatakan di dalam Afidavit Chellappa a/l K. Kalimuthu yang diikrarkan dan difailkan di sini.

This reference in the summons in the present case to the grounds in the plaintiff's supporting affidavit is also of no help to the plaintiff for the purpose of O. 32 r. 1. I agree with the decision of the learned Judicial Commissioner in *Dr. Woo Kin Chong* that where the specific rule in the RHC stipulates that the ground must be stated in the notice of motion then the grounds must be stated in the notice of motion itself: it will not suffice that the grounds are set out, even if in detail, in the supporting affidavit; and that failure to state the grounds in the notice of motion itself renders the notice incomplete and irregular, and the notice of motion should be rejected by the court. It is, however, true that *Dr. Woo Kin Chong* concerns a notice of motion under O. 69 r. 4(2) of the RHC whereas the instant case concerns a summons in chambers under O. 32 r. 1. Be that as it may, in my view, the principle enunciated in the case cited, nevertheless, equally applies to a summons under O. 32 r. 1 of the RHC.

With respect, I have to differ with the decision of the learned judge on the point in *BSN Commercial Bank*. In any case, perhaps I should add, if I may be permitted to do so, that, in considering this case *(BSN Commercial Bank)* as a judicial precedent on the interpretation and effect of O. 32 r. 1, one must also take note of the fact that the learned judge, in his ruling, appears

somewhat to entertain some doubt on the applicability of O. 32 r. 1 to the application before him. For, just before making his ruling on the point, his Lordship had commented (to repeat):

> A question that might have been raised by learned counsel for the plaintiffs is whether O. 32 r. 1, which concerns application in chambers by summons generally, applies to an application for summary judgment, in view of the act that O. 14 r. 2(1) sets out specifically the mode of applying for summary judgment. The point, however, was not raised.

In my opinion, the above dicta has a bearing on the weight of the precedent in *BSN Commercial Bank* on the issue in question.

Accordingly, the preliminary objection is upheld and the application is dismissed with costs.

(Application dismissed with costs.)